IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6917 OF 2007

Smt.Vidya Ganraj Koli ....Petitioner
V/s
Rajesh Bhagwan Koli & Anr. ....Respondents.

Mr.G.S.Godbole i/by S.M.Sahasrabudhe, Adv. For the petitioner.

Mr.P.K.Dhakephalkar, Sr. Adv. I/by Ms.Shama N. Ghotekar, For the respondents.

CORAM: A.P.DESHPANDE, J.
19/9/07

PC:

The present petitioner contested the election as member of Uran Municipal Council held in November, 2006. The nomination form submitted by the petitioner was objected to by respondent No.1. The said objection was rejected and hence the 1st respondent had filed an election appeal No.3/06. The said appeal came to be rejected and thus the petitioner contested the election and having polled highest number of votes, she was declared elected. Respondent No.1 thereafter filed an election petition No.2/06 in the District Court Raigad under section 21 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965 (the "Act") and prayed for setting aside the election of the petitioner from ward No.1 of Uran Municipal Council. The main ground on which the election of the petitioner was called in question was that the petitioner had given birth to a fourth child on 25.7.02 i.e. after the cut off date it being 12.9.01. The case of the respondent No.1 before the district court was that the petitioner had incurred disqualification on

account of birth of a male child by name master Geet. Reliance was placed on section 16(1)(k) of the act. Section 16 provides that:

> "No person shall be qualified to become a councilor whether by election or nomination who ---
>
> (k)has more than two children:
>
> Provided that, a person having more than two children on the date of commencement of the Maharashtra Municipal Corporations and Municipal Councils, Nagar Pachayats and Industrial Township (Second Amendment) Act, 1995 shall not be disqualified under the said clause so long as the number of children he had on the date of such commencement does not increase:"

2. As stated herein above the respondent No.1-election petitioner had contended that the fourth child was born on 25.7.02 whereas the present petitioner/elected candidate claimed that the child was born on 30.8.01. Respondent No.1 examined Dr.Sudha Shah as witness No.2. The said witness is resident doctor attached to Masinha hospital. During her evidence she has produced admission register maintained in the maternity ward and on page 383 thereof had entry No.1201751. The said entry has been proved. The said entry reveals that the present petitioner has given birth to a child and the name of petitioner and her husband is recorded as parents of the child. According to the procedure followed at the said hospital as and when a child is born information in regard to the birth is forwarded to Mumbai Municipal Corporation and entry in the register maintained by the Corporation was also placed on record of the District Judge. The corresponding entry in regard to birth of the child of the petitioner together with her name is corroborated from the evidence produced by witness No.3 by Dr.Rajnikant Bhagat who is

working as medical officer `E' ward. With a view to further corroborate the record of maternity ward of Masinha hospital and the corresponding record of the municipal corporation the respondent No.1 examined a witness from Uran Education Society wherein the said child by name master Geet has been admitted. The witness fro;m the school has been examined as witness No.4 by name Dharmendra Mhatre. He has produced the admission form of the child of the present petitioner submitted by the parents at the time of admitting the child. The said form reveals the date of birth of the child as 25.7.02 as claimed by respondent No.1. Even earlier phone number of the petitioner which is mentioned in the form has been proved by examining the witness from telephone exchange. The petitioner has utterly failed to explain as to how come the date of birth of the child has been informed in the admission form to be 25.7.02. The said form has been signed by the petitioner and her husband. Curiously enough the husband of the petitioner was examined as witness by respondent No.1 and his examination has been very crucial in as much as the husband of the petitioner categorically admitted that the signatures on the admission form of master Geet is that of the petitioner and her husband. The very fact that the admission form of the child reveals the date of birth as claimed by the respondent No.1 to be 25.7.02, goes to corroborate the birth of the child and the relevant entry in the maternity ward register from Masinha Hospital so also the birth entry recorded in corporation register. As against the said material evidence led by the respondent No.1 the petitioner tried to make out a case that when she was in advanced stage of pregnancy she had gone to some village with a view to bargain a transaction for purchase of land and there she delivered the child. The delivery is said to have been attended by some lady and on the next day the petitioner claims to have returned home. This story put

forth by the petitioner has been found to be unbelievable by District Judge. The petitioner has also relied upon a certificate issued by the gram sewak of Gram Panchayat, Nasrapur about the date of birth of the child to be 30.8.01. There is no corresponding record available with the office of panchayat samiti. The evidence of village development officer is also recorded. Various discrepancies are brought on record in relation to the birth certificate issued by Gram Panchayat. The District Judge has held that the gram sewak has not followed any procedure while recording the birth so also while issuing the birth certificate. A categorical finding backed by evidence, is recorded that the birth certificate and birth extract of Gram Panchayat is concocted, fraudulent and bogus. I have perused the entire evidence and I concur with the finding recorded by the District Judge. On appreciation of evidence led by rival parties as the District Judge found the evidence led by respondent No.1 to more trustworthy and reliable the District Judge has proceeded to reject case of the petitioner about the child having been born prior to cut off date. The District Judge has also considered the fact that the other children of the petitioner were borne at Bombay hospital and Elizabeth hospital at Bombay. In regard to the date of birth of other children the petitioner and her husband has deposed that they do not remember the date of their birth. Appreciating the evidence in proper perspective a finding of fact has been recorded by the District Judge that the fourth child was borne to the petitioner on 25.7.02 i.e. after cut off date viz. 12.9.01 and hence the petitioner was disqualified to contest the election under section 16(1)(k) of the act. The said finding of fact in regard to date of birth has been recorded on the basis of weighty evidence on record. The impugned judgment and order passed by the District Judge does not suffer from any illegality warranting interference in exercise of writ jurisdiction. Hence writ petition is summarily

dismissed.